***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

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+ CRIMINAL APPEAL No. 1437 of 1998

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%Dated 18.02.2005

1 P.Narasimha Reddy, S/o. late P.Narayana Reddy,
2 P.Bhoopal Reddy,

..... PETITIONERS

AND

$ 1 The Sub-Registrar,
Shameerpet Mandal, Ranga Reddy Dist.,
2 The District Collector,
R.R.Dist.,

.....RESPONDENTS

! Counsel for the Petitioner: MR.K.RAJI REDDY

^ Counsel for the Respondents: GP FOR REVENUE

< GIST:

> HEAD NOTE:

? Cases referred

AIR 1986 Panjab & Haryana 328

2 AIR 1945 Madras 465

3 1999 (4) ALT 556

4 1999(6) ALT 599

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO: 14207 of 1997

Between:

1 P.Narasimha Reddy, S/o. late P.Narayana Reddy,
R/o. Devara Yamjal Village, Shamirpet Mandal,
R.R.Dist.
2 P.Bhoopal Reddy,
R/o. Devara Yamjal Village, Shamirpet Mandal,
R.R.Dist.

..... PETITIONERS

AND

1 The Sub-Registrar,
Shameerpet Mandal, Ranga Reddy Dist.,
2 The District Collector,
R.R.Dist.,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st Respondent in refusing to register the document presented by the petitioners for registration without assigning any reasons as illegal, arbitrary and without jurisdiction and consequently direct the 1st Respondent to receive the register all such documents that may be presented by the petitioners for registration in respect of petitioners land.

Counsel for the Petitioner: MR.K.RAJI REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

HONOURABLE MR.JUSTICE P.S.NARAYANA

WRIT PETITION NO.14207 OF 1997

ORDER:

Heard Ms.Satyavathi, learned counsel representing the writ petitioners and the learned Government Pleader for Revenue.

2. The writ petitioners filed the present writ petition seeking a writ of Mandamus or any other appropriate direction regarding the action of the first respondent in refusing to register the document presented by the petitioners for registration without assigning any reasons, as illegal, arbitrary and without jurisdiction, and consequently direct the first respondent to receive and register the documents that may be presented by the petitioners for registration in respect of petitioners' lands and pass such other suitable orders.

3. It is averred that the petitioners are agriculturists by profession and are the absolute joint owners and possessors of the agricultural lands situated at Devara Yamjal village, Shameerpet Mandal, Rangareddy District, and they inherited the above properties from their father. It is stated that some of the properties were purchased by the petitioners' father through registered sale deed dated 21-03-1970 and 21-11-1970 respectively. It is further sated that the petitioners have been in peaceful possession and enjoyment of those lands and the revenue records also substantiate the contention of the petitioners. It is further stated that the petitioners effected oral partition in the month of October 1991, and ever since then they are in separate possession and enjoyment of their respective shares. It is stated that the petitioners presented the documents before the first respondent for registration on 22-08-1996. But the first respondent refused to receive and register the same on the ground that

they shall obtain clearance certificate from the second respondent. Since the first respondent refused to receive and register the documents presented by the petitioners pertaining to joint family property, the petitioners filed W.P.No.17820 of 1996 before this Court praying to direct the first respondent to receive and register the documents that may be presented by the petitioners for registration in respect of their agricultural lands, and this Court by its order dated 28-08-1996 disposed of the said writ petition directing the first respondent to register the documents, if it is in order or if in his opinion the same cannot be registered, the procedure prescribed under Section 71 of the Act shall be followed and appropriate orders be passed in accordance with law. It was further directed that the first respondent either to register the document or to refuse the same in accordance with law by recording the reasons for the said refusal. In pursuance of the said orders, the petitioners presented the documents by paying requisite fee on 18-09-1996. Though the first respondent received the documents on the same day, he had not released the said documents, even after the lapse of eight weeks for the reasons best known to him. As the first respondent failed to release the documents, in spite of repeated requests made by the petitioners, the petitioners got issued a legal notice dated 12-10-1996 requesting him to release the document forthwith, as otherwise, they will move this Court. Subsequent to the issue of the legal notice, the first respondent passed an order on 05-12-1996 refusing to register the document on the ground that the petitioners issued legal notice threatening to move this Court for contempt of Court. The said action is being questioned in the present writ petition.

4. In the counter affidavit filed, it was averred that the petitioners had not presented the documents for registration before the first respondent at the first instance, but they asked for the value as per the market value guidelines and the first respondent intimated the petitioners that the survey numbers are temple lands, as per the Mandal Revenue Officer Letter No.B/29/91 dated 10-03-1993. The petitioners filed Writ Petition No.17820 of 1996 before this Court, and under the directions of this Court, the document was kept pending as No.29 of 1996 and refused registration on 05-12-1996 under Section 71 of the Indian Registration Act (herein after referred to as ‘the Act’ for brevity), as the lands

noted in letter No.B/29/91 issued by the Mandal Revenue Officer, Shameerpet, under the instructions of the Collector, Rangareddy, for declaring as temple lands. It is further stated that under Section 72 of the Act, an appeal is provided for to the Registrar from any orders passed by the Sub-Registrar, refusing registration. The petitioners failed to avail the alternative remedy. It is further stated that the document was kept pending as No.29 of 1996 on 18-09-1996, as the Mandal Revenue Officer, Shameerpet, had addressed a letter to the office on 10-03-1993 not to entertain any transaction relating to survey numbers furnished in the said letter. Hence, the respondent refused registration, which is in accordance with law. It is stated that the petitioners filed W.P.No.17820 of 1996, which was dismissed at the stage of admission, and however, this Court directed the Sub-Registrar to register the documents subject to the result of W.P.No.7687 of 1995 and the petitioners without availing the remedy by filing an appeal had invoked the jurisdiction of this Court. Hence, the writ petition is liable to be dismissed.

5. Heard the counsel.

6. Section 71 of the Act dealing with reasons for refusal to register to be recorded reads as hereunder:

> "(1) Every Sub-Registrar refusing to register a document except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2, and endorse the words "Registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.
>
> (2) no registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document as directed to be registered."

7. It is no doubt true that Section 72 of the Act provides for an appeal to Registrar from order of Sub-Registrar refusing registration on ground other than denial of execution.

8. In **Krishna Gopal Kataria v. State of Punjab**, it was held that:

> "The Registration Act is a complete Code by itself and the powers of the Registrars and Sub-Registrars are clearly defined by demarking. Inspector of General of Registration under Section 69 can only exercise general superintendance over all the Registrars under the Act and make rules consistent with the provisions of the Act, providing for the matters mentioned therein. Sections 21, 23, 28, 32, 35 and 74 authorise the Sub-Registrar to refuse registration if the documents are not properly executed or presented or the subject-matter of the document lay beyond territorial jurisdiction and nothing in the Act authorized either the State Government or the Registrar to instruct eh Sub-Registrars not to register a document, where the State Government and the Registrar inturn, instructed the Sub-Registrar not to register sale deeds or lease deeds in respect of the properties belonging to religious/charitable institutions. The above instructions were held to be *ultravires* their powers and the Sub-Registrar was directed to register the lease deed in the case."

The decision of the Division Bench of the Madras High Court in **Nalla Goundan v. Krishna Swami Naicker** also had been referred to.

9 . In **S.Nagi Reddy v . Joint Sub-Registrar-I, Registration and Stamps, Tirupati,** this Court while dealing with Section 17 of the Act the Registration of documents and purchase of land of a Mutt held that:

> "The sub registrar being a statutory authority cannot refuse to register a document at the dictation of an extraneous authority and refusal to register the sale deed of the petitioner on the direction of the Custodian of Endowments, an extraneous authority is not legal and hence, the directions were given to register the sale deed if the same is in order and in accordance with law."

10. In **D.Linga Rao v. Sub-Registrar,** while dealing with the aspect of issuance of the writ of Mandamus in relation to an order made under Section 71 of the Act, this Court, no doubt, held that:

> "The petitioners had not made out a case relating to the demand of registration and refusal there of and no material had been placed in this regard and hence, a writ of Mandamus cannot be issued."

11. However, the learned counsel for the petitioners placed strong reliance on the decision of the Division Bench of this Court in **Sub-Registrar v. K.Rama Krishna Raju** in W.A.No.707 of 2002.

The Division Bench while deciding the similar question had arrived at a conclusion that the memo issued by the Inspector of General of Registration and Stamps as well as the memo issued by the Mandal Revenue Officer directing the Sub-Registrar not to register the documents are void and inoperative. The Sub-Registrar relying upon the said memos cannot refuse to receive the documents presented for registration. The Sub-Registrar is bound to receive the documents and scrutinize the same and accordingly register the documents provided, there are no other legal impediments for registration of the documents. The Sub-Registrar cannot refuse to register the document on the basis of the memos issued by the Mandal Revenue Officer and the Inspector General of Registration and Stamps.

12. No doubt, that the Division Bench also has considered Section 22-A of the Act which had been introduced in the State of Andhra Pradesh by virtue of an Amending Act.

13. In the light of the decision of the Division Bench referred to supra and also in the light of the specific stand taken in the counter-affidavit, there cannot be any doubt what so ever that the essential ingredients for issuance of writ of Mandamus are well satisfied in view of the fact that there had been a demand and refusal by making an order. In this regard, it is pertinent to note that the documents were kept pending which had been done in pursuance of the directions issued by this Court by an order in W.P.No.17820 of 1996 referred to supra.

14. Hence, viewed from any angle, the action of the respondents, which had been called in question in the present writ petition, cannot be said to be in accordance with law. It is no doubt true that a remedy by way of an appeal is provided for under Section 72 of the Act. But, however, in the light of the facts specified supra, at this stage, the writ petitioners need not be driven to the remedy of appeal in the light of the respective stands taken by the parties in their pleadings.

15. Hence, in the light of the binding decision of the Division Bench made in W.A.No.707 of 2002, this Court is inclined to allow the writ petition and accordingly, the writ petition is hereby allowed. No order as to costs.

P.S.NARAYANA, J

18th February, 2005.

SKM

L.R. Copy to be marked: Yes.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Friday the Eighteenth day of February Two thousand and Five.

REGISTRAR

One Fair Copy to the Honourable Sri Justice P.S.Narayana for his Lordships kind perusal.

Copy to

1 The Sub-Registrar,
Shameerpet Mandal, Ranga Reddy Dist.,
2 The District Collector,

R.R.Dist.,

3 Two C.Cs. to G.P. for Revenue, High Court buildings,

High Court of A.P., Hyderabad (OUT)

4 8 L.R. Copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice

and Company affairs, New Delhi.

6 The Secretary, A.P. Advocates Association, Library, High Court

Buildings, Hyderabad.

7 Two C.D. Copies.